



**KANSAS DEPARTMENT OF HEALTH AND
ENVIRONMENT
BUREAU OF ENVIRONMENTAL REMEDIATION**



**ENVIRONMENTAL USE CONTROL
PROGRAM FACT SHEET**

What is an Environmental Use Control?

An Environmental Use Control is a legal mechanism for applying restrictions, prohibitions, and conditions on land use for a property that has environmental contamination at levels prohibiting unrestricted use; that is, a property with contaminant concentrations that exceed residential standards. An Environmental Use Control can be voluntarily applied to a property by the landowner to assure adequate protection of public health and the environment from contamination on the subject property. The protection offered by an Environmental Use Control can provide a landowner relief from environmental liability concerns, making property more attractive to redevelopment or prospective buyers.

Why are Environmental Use Controls needed?

Environmental Use Controls are necessary when residual contamination (contamination remaining on the property following cleanup) prohibits unrestricted use of the property. Environmental Use Controls provide protection from exposure to residual contamination that remains in place on a subject property. For example, the conditions of an Environmental Use Control may prohibit groundwater beneath a property from being used as drinking water, or require the maintenance of an engineered barrier, such as a cap, to prevent exposure to contaminants. Violation of conditions established through an Environmental Use Control could create an unacceptable risk.

In summary, Environmental Use Controls provide landowners with a way to achieve site closure by addressing remaining environmental concerns caused by residual contamination.

What are the benefits of Environmental Use Controls?

Environmental Use Controls allow for the development and productive use of a contaminated property where cleanup to levels allowing unrestricted use is not economically or technically feasible. In most cases, development of a property should be achievable within the framework of Environmental Use Controls, allowing a property which was previously undeveloped or abandoned due to environmental concerns to be put to beneficial and productive use and/or be made more attractive to prospective buyers. Environmental Use Controls also protect the seller of a property by informing future landowners of the use restrictions necessary to mitigate the environmental liability concerns associated with a property.

Can I use an Environmental Use Control to address contamination on my property?

Environmental Use Controls can be used to address environmental concerns if a property is enrolled in a KDHE environmental program, the department has approved use of Environmental Use Controls at the property, and the cleanup objectives are based on any of the following:

- Non-residential land use,
- Protective structures (i.e., engineered barriers such as caps, berms, surface controls, etc.),
- Prohibiting activities on the property (i.e., no water wells, excavation, trenching, etc.),
- Any combination of the above.

A landowner does not need an Environmental Use Control when contamination is cleaned up to residential standards for unrestricted use.

Are Environmental Use Controls permanent land use restrictions?

Yes, an Environmental Use Control runs with the property and is binding on the landowner and any subsequent owners, lessees, and other users of the property. However, the landowner may conduct additional investigative and/or remedial activities in the future to reduce or eliminate the remaining contaminants posing a risk to human health or the environment. Once such work is completed, a request can be made to the department to remove or modify the Environmental Use Control.

What conditions may be imposed by Environmental Use Controls?

Some conditions imposed by Environmental Use Controls could:

- Restrict future land use to industrial/commercial,
- Prohibit installation of drinking water wells on the property,
- Limit or prohibit digging or other types of excavation activities on the property,
- Require erosional controls on the property,
- Limit the type of vegetation to be grown on a subject property, and/or
- Require maintenance of a protective structure or other engineered barrier.

Environmental Use Controls serve to prevent exposure to remaining contaminants, but are site-specific and depend on multiple factors. These factors may include:

- Amount and type of contamination left on the property,
- Location of contamination in relation to other land uses,
- Potential migration pathways or routes of exposure, and
- Geology of the site.

How much does an Environmental Use Control cost?

The cost of an Environmental Use Control is based upon the property size, contaminant mobility/toxicity, maintenance requirements, and inspection frequency. KDHE will either request a one-time payment that will not exceed \$10,000 or a long-term care agreement will be negotiated to provide the funding necessary for maintaining the Environmental Use Control.

My property is already zoned commercial, so should I apply for an Environmental Use Control restricting the property to commercial/industrial use?

An Environmental Use Control from the department is not the same as a local commercial zoning ordinance. Local zoning ordinances do not offer the same health protection because residential use of commercially zoned property is not necessarily prohibited. Restricting the land use to commercial/industrial property under an Environmental Use Control means that the property cannot be used for residential purposes.

"Residential property" as defined by existing regulation (Kansas Administrative Regulations K.A.R. 28-71-1(u)) means any property currently used or proposed for use as one of the following: (1) a residence or dwelling, including a house, apartment, mobile home, nursing home, or condominium; or (2) a public use area, including a school, educational center, day care center, playground, unrestricted outdoor recreational area, or park.

Where can I get more information about Environmental Use Controls?

Contact Rick Bean, Section Chief, Remedial Section at (785)296-1675 or Christine Jump, Unit Chief, Post-Remedial/EUC Unit at (785) 296-1935 for more information regarding Environmental Use Controls or an application to participate in the Environmental Use Control Program.